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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Technology Transitions (GN Docket No. 13-5); Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers (RM-11358); Special Access for Price Cap Local Exchange Carriers (WC Docket No. 05-25); AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (RM-10593)

Dear Ms. Dortch:

On Wednesday, June 10, Curtis L. Groves, Fred Moacdieh and I, of Verizon, met with Matthew DelNero, Carol Mattey, Deena Shetler, Pam Arluk, Randy Clarke, Daniel Kahn, Jean Ann Collins, Michele Berlove, Bakari Middleton, John Visclosky, and David Zesiger, all of the Wireline Competition Bureau, to discuss the above captioned proceedings.

In the meeting, we explained that under its current discontinuance rules the Commission already considers whether reasonable substitutes for a discontinued service are available in the marketplace. Those rules give the Commission a mechanism to ensure that customers, whether retail or wholesale, have access to reasonable substitutes in the marketplace as providers discontinue older services. Thus, the Commission should not adopt its tentative conclusion to require ILECs to provide "equivalent" substitute services for legacy wholesale inputs they seek to discontinue, which would make the existing discontinuance process unnecessarily burdensome and could delay the introduction and availability of more advanced services. Consumers benefit from the introduction of newer, more capable services, and inflexible discontinuance rules that force a provider to support yesteryear services impede this progress

If adopted, the proposed equivalence standard would be particularly burdensome for providers seeking to grandfather or discontinue DS0 dedicated services. Many of these services have been supplanted by more recent technology. These outdated services often rely on equipment that manufacturers no longer build or support. Providing an "equivalent" service with equivalent functionality to these old and slow services is both technically difficult and costly. For example, based in part on experience in the six wire centers Verizon migrated last year to all-fiber facilities, Verizon estimates that the necessary equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000. Providers seeking to discontinue legacy DS0 services or update their offerings would be faced with the cost of maintaining legacy services with declining utility, which diverts resources that could be dedicated to newer services.

We also noted that an inflexible "equivalence" standard would inhibit providers from developing solutions that–while not technically identical to the older services being discontinued – might better fit customers' current and future needs. For example, in some cases a virtual private network service or similar connection might be more efficient and may provide customers with similar or better functionality to a dedicated service.

Instead of a new equivalence standard, the Commission should continue to ask whether there are comparable alternatives available to customers being offered either by the provider or its competitors. In the special access proceeding, the Commission has collected data about competitive alternatives, and the Commission should analyze those data before it draws conclusions about the substitutes in the marketplace. Meanwhile, if a carrier files a discontinuance application before the Commission completes its analysis, the Commission's current rules give the Commission a mechanism to review the application.

Among other things, the special access data will show cable companies are investing in alternatives to traditional special access and Ethernet services, thus providing additional options for customers. Cable has become a competitive force for business services, and in 2014 the U.S. cable industry for the first time exceeded $10 billion in business service revenue.[1] At year-end 2014, Time Warner Cable ranked fifth in size among U.S. Ethernet providers based on customer ports, Comcast ranked sixth, and Cox ranked seventh.[2] Time Warner Cable's revenue from business services jumped 16.9% year-over-year in the first quarter of 2015, fueled by a $13M year-over-year growth in cell tower backhaul revenue.[3] Comcast's business services revenue increased 21.4% during the same three-month period, and Comcast attributed its growth to winning business customers and "gain[ing] market share from competitors by offering competitive services and pricing."[4] And Cox—which has deployed more than 25,000 miles of metro fiber[5]

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[1] Carol Wilson, *US Cable Nears $10B in Business Services Revenue*, Light Reading (Dec. 2, 2014) http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-$10b-in-business-service-revenues/d/d-id/712347.

[2] Vertical Systems Group, 2014 U.S. Carrier Ethernet LEADERBOARD (Feb. 19, 2015) http://www.verticalsystems.com/vsglb/2014-u-s-carrier-ethernet-leaderboard/

[3] *See* Time Warner Cable Inc., Form 10-Q, at 12 (SEC filed April 30, 2015), http://www.sec.gov/Archives/edgar/data/1377013/000119312515158819/d907260d10q.htm.

[4] *See* Comcast, Form 10-Q at 18 (SEC filed May 4, 2015), http://www.sec.gov/Archives/edgar/data/902739/000119312515169012/d915216d10q.htm.

[5] Cox Business, *A Remarkable Company You Can Trust*, http://www.cox.com/wcm/en/business/datasheet/brc-why-cox-business-9302013.pdf?campcode=brc_un_05_101513 (last visited June 10, 2015).

with at least "28,000 fiber lit buildings, 400,000 fiber near-net buildings and over 300,000 HFC serviceable buildings."[6] —has said it expects to exceed $2 billion in business revenues by 2016.[7]

These investments—and investments by some traditional CLECs that also serve customers over facilities they own[8]—have occurred in a robustly competitive marketplace. The Commission should let that marketplace continue to develop without additional burdens. Its tentative conclusion would not promote the benefits of competition, as the NRPM asked.[9] Instead, new regulations that could force ILECs to retrofit modern facilities and technologies to continue to provide old services, and to do so on "equivalent" rates, terms, and conditions to the legacy services they are replacing, would discourage innovation, investment, and economic growth by anchoring modern networks and services with the weight of last-century services. And they would distort the marketplace by regulating some providers' prices but not others, favoring competitors that did not invest in last-mile facilities at the expense of those who did, including cable companies who entered and thrived in the Ethernet marketplace on the assumption that regulation would not distort prices in the market.

Finally, in response to questions from staff, we addressed Comptel's recent ex parte in which it said the section 214 discontinuance process should apply to UNE-P commercial replacement products.[10] Those UNE-P replacement products are commercial offerings, not regulated offerings, and—as we will explain in our comments on Granite's related petition[11]—the efforts to resurrect a regulated UNE-P obligation are misguided and unlawful. Commercial UNE-P

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[6] Sean Buckley, *U.S. Fiber Penetration Reaches 39.3 Percent of Buildings, Says VSG*, FierceTelecom (Apr. 4, 2014), http://www.fiercetelecom.com/story/us-fiber-penetration-reaches-393-percent-buildings-says-vsg/2014-04-04

[7] Cox Business, *supra*; *see also* K.C. Neel, *Business Services Replenish Coffers*, Multichannel News (Dec. 1, 2014), http://www.multichannel.com/news/technology/business-services-replenish-coffers/385901 ("Cox . . . is on track to generate $2 billion from the [commercial-services category] by 2016, Steve Rowley, senior vice president of Cox Business, said.").

[8] *See* Level 3 Communications, Inc., Form 10-Q at 7 (SEC filed May 8, 2015), http://www.sec.gov/Archives/edgar/data/794323/000079432315000013/lvlt-033115_10q.htm.

[9] *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593; 20 FCC Rcd 16288 (2014) ¶ 110 ("*NPRM*").

[10] Ex Parte Letter from Karen Reidy, Comptel, to Marlene H. Dortch, FCC, *Technology Transitions*, GN Docket No. 13-5 *et al.* (June 8, 2015).

[11] *Granite Petition of Granite Telecommunications, for Declaratory Ruling Regarding the Separation, Combination, and Commingling of Section 271 Unbundled Network Elements*, WC Docket No. 15-114 (May 4, 2015) ("Petition").

replacement products are market-based responses to competitive pressures, and in the six wire centers that Verizon migrated to all-fiber facilities, Verizon provided Wholesale Advantage - our UNE-P commercial replacement product - onto the new fiber facilities with no change in rates, terms, or conditions.

Sincerely,

Maggie McCready

cc: Matthew DelNero
Carol Mattey
Deena Shetler
Pam Arluk
Randy Clarke
Daniel Kahn
Jean Ann Collins
Michele Berlove
Bakari Middleton
John Visclosky
David Zesiger